

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P. (C) 747 of 2011 & CM APPL 1568/2011

INDIAN INSTITUTE OF TECHNOLOGY,

DELHI Petitioner Through: Mr. Arjun Mitra, Advocate

versus

NAVIN TALWAR Respondent Through: None.

And

W.P. (C) 751 of 2011 & CM APPL 1598/2011

INDIAN INSTITUTE OF TECHNOLOGY,

DELHI Petitioner Through: Mr. Arjun Mitra, Advocate

versus

SUSHIL KOHLI Respondent Through: None.

CORAM: JUSTICE S.MURALIDHAR

1. Whether Reporters of local papers may be

allowed to see the judgment? No

2. To be referred to the Reporter or not? Yes

3. Whether the judgment should be reported in Digest? Yes ORDER

07.02.2011

1. The Petitioner Indian Institute of Technology (IIT), Delhi is aggrieved by orders dated 23rd November 2010 and 23rd December 2010 passed by the Central Information Commission (CIC) in the complaints of Mr. Navin Talwar [the Respondent in Writ Petition (Civil) No. 747 of 2011) and Mr. Sushil Kohli [the Respondent in Writ Petition (Civil) No. 751 of 2011), respectively.

2. The issue involved in both these petitions is more or less similar. Mr. Navin Talwar sat for the Joint Entrance Examination 2010 (JEE 2010). Mr. Sushil Kohli's daughter, Ms. Sakshi Kohli, sat for the Graduate Aptitude Test in Engineering 2010 (GATE 2010). The scheme of the examination is that the candidates are given two question papers, containing multiple choices for the correct answers, the correct answers are to be darkened by a pencil in the Optical Response Sheet (ORS) which is supplied to the candidates. The candidate has to darken the bubbles corresponding to the correct answer in an ORS against the relevant question number.

3. The JEE 2010 was conducted on 11th April 2010 in 1026 centres across India and 4.72 lakh candidates appeared. The answer key was placed on the internet website of the IIT on 3rd June 2010 while the individual marks of the candidates were posted on 5th June 2010. Counseling of the successful candidates took place from 9th to 12th June 2010. The GATE 2010 was conducted on 14th February 2010 and the results were announced on 15th March 2010.

4. In the information brochure, for the JEE, one of the terms and conditions reads as under:

"X. Results of JEE-2010

1. Performance in JEE-2010

The answer paper of JEE-2010 is a machine-gradable Optical Response Sheet (ORS). These sheets are scrutinized and graded with extreme care after the examination. There is no provision for re-grading and re-totalling. No photocopies of the machine-gradable sheets will be made available. No correspondence in this regard will be entertained.

Candidates will get to know their All India Ranks (AIR)/Category ranks through our website/SMS/VRS on May 26, 2010.

Candidates can view their performance in JEE-2010 from JEE websites from June 3, 2010."

A similar clause is contained in Clause 3.5.1 (d) of the brochure for GATE.

5. It is stated that despite the above condition, Mr. Navin Talwar [the Respondent in W.P. (Civil) No. 747 of 2011] and Mr. Sushil Kohli (father) [the Respondent in W.P. (Civil) No. 751 of 2011] filed applications under the Right to Information Act, 2005 (RTI Act) with the Public Information Officer (PIO), IIT seeking the photocopies of the respective ORSs and for the subject-wise marks of each of the candidates.

6. The PIO of IIT responded by stating that the marks obtained by the candidates were available on the internet and there was no provision for providing a photocopy of the ORS. Thereafter, the Respondents filed appeals before the CIC. After perusing the response of the PIO, IIT, the CIC passed the following order in the appeal filed by Mr. Navin Talwar: "3. Upon perusal of the documents of the case, the Commission finds that the response of the Public Authority is not found acceptable by the Complainant. Hence, despite the information provided by the letter dated 15 th June 2010, the Complainant approached this Commission. The Commission suggests the Complainant to seek inspection of the relevant records and directs Indian Institute of Technology, Delhi to cooperate with the Complainant in the inspection of the file/s. It is also directed that the Respondent shall submit a duly notarised affidavit on a Non-judicial stamp paper stating the inability to furnish the copy of ORS. The Complainant is at liberty to approach the appropriate Grievance Redressal Forum or seek legal remedy."

7. As regards the case of Mr. Sushil Kohli the Commission found that the defence of the IIT was that "the information sought is exempted under Section 8 (1) (e) since GATE Committee shares fiduciary relationship with its evaluators and maintains confidentiality of both the manner and method of evaluation." It was further contended before the CIC that "the evaluation of the ORS is carried out by a computerized process using scanning machines." The decision rendered on 23rd December 2010 in the appeal filed by Mr. Sushil Kohli reads as under:

"2. During the hearing, the Respondent stated that they have to inform the NCB, MHRD before handing over the marks to the Appellant and that the process would take more than a month. The Commission in consultation with

the Appellant agreed to give additional time to the PIO for providing the information and accordingly directs the PIO to provide the marks sheet to the Appellant within 45 days from the date of hearing to the Appellant."

8. This Court has heard the submissions of Mr. Arjun Mitra, learned counsel appearing for the Petitioner IIT. It is first submitted that as regards Mr. Navin Talwars case, severe prejudice has been caused to the Petitioner because the decision of the CIC has been rendered without affording the IIT an opportunity of being heard.

9. This Court is not impressed with the above submission. The defence the Petitioner may have had, if a notice had been issued to it by the CIC, has been considered by this Court in the present proceedings. This Court finds, for the reasons explained hereinafter, that there is no legal justification for the Petitioners refusal to provide each of the Respondents a photocopy of the concerned ORS.

10. It is next submitted that under Section 8 (1) (e) of the RTI Act, there is a fiduciary relationship that the Petitioner shares with the evaluators and therefore a photocopy of the ORS cannot be disclosed. Reliance is placed on the decision by the Full Bench of the CIC rendered on 23rd April 2007 in Rakesh Kumar Singh v. Harish Chander.

11. In the first place given the fact that admittedly the evaluation of the ORS is carried out through a computerized process and not manually, the question of there being a fiduciary relationship between the IIT and the evaluators does not arise. Secondly, a perusal of the decision of the CIC in Rakesh Kumar Singh v. Harish Chander shows that a distinction was drawn by the CIC between the OMR sheets and conventional answer sheets. The evaluation of the ORS is done by a computerized process. The non-ORS answer sheets are evaluated by physical marking. It was observed in para 41 that where OMR (or ORS) sheets are used, as in the present cases, the disclosure of evaluated answer sheets was "unlikely to render the system unworkable and as such the evaluated answer sheets in such cases will be disclosed and made available under the Right to Information Act unless the providing of such answer sheets would involve an infringement of copyright as provided for under Section 9 of the Right to Information Act."

12. Irrespective of the decision dated 23rd April 2007 of the CIC in Rakesh Kumar Singh v. Harish Chander, which in any event is not binding on this

Court, it is obvious that the evaluation of the ORS/ORM sheets is through a computerized process and no prejudice can be caused to the IIT by providing a candidate a photocopy of the concerned ORS. This is not information being sought by a third party but by the candidate himself or herself. The disclosure of such photocopy of the ORS will not compromise the identity of the evaluator, since the evaluation is done through a computerized process. There is no question of defence under Section 8 (1) (e) of the RTI Act being invoked by the IIT to deny copy of such OMR sheets/ORS to the candidate.

13. It is then urged by Mr. Mitra that if the impugned orders of the CIC are sustained it would open a "floodgate" of such applications by other candidates as a result of which the entire JEE and GATE system would "collapse". The above apprehension is exaggerated. If IIT is confident that both the JEE and GATE are fool proof, it should have no difficulty providing a candidate a copy of his or her ORS. It enhances transparency. It appears unlikely that the each and every candidate would want photocopies of the ORS.

14. It is then submitted that evaluation done of the ORS by the Petitioner is final and no request can be entertained for re-evaluation of marks. Reliance is placed on the order dated 2nd July 2010 passed by the learned Single Judge of this Court in Writ Petition (Civil) No. 3807 of 2010 [Adha Srujana v. Union of India]. This Court finds that the question as far as the present case is concerned is not about the request of the Respondents for re-evaluation or re-totalling of the marks obtained by them in the JEE 2010 or GATE 2010. Notwithstanding the disclosure of the ORS to the Respondent, IIT would be within its rights to decline a request from either of them for re-evaluation or re-totalling in terms of the conditions already set out in the information brochure. The decision dated 2nd July 2010 by this Court in W.P. (C) No. 3807 of 2010 has no application to the present case.

15. The right of a candidate, sitting for JEE or GATE, to obtain information under the RTI Act is a statutory one. It cannot be said to have been waived by such candidate only because of a clause in the information brochure for the JEE or GATE. In other words, a candidate does not lose his or her right under the RTI Act only because he or she has agreed to sit for JEE or GATE. The condition in the brochure that no photocopy of the ORS sheet will be provided, is subject to the RTI Act. It cannot override the RTI Act.

16. For the above reasons, this Court finds no reason to interfere with the impugned orders dated 23rd November 2010 and 23rd December 2010 passed by the CIC.

17. The writ petitions and the pending applications are dismissed. S.
MURALIDHAR, J

FEBRUARY 07, 2011

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